

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

50900

FILE: B-184699

DATE: September 2, 1975

MATTER OF: Gibraltar Industries, Inc.

97566

## DIGEST:

Since protester did not protest alleged impropriety in IFB which was apparent prior to bid opening, namely that end item testing had been omitted from IFB, its protest is untimely since protests based upon alleged improprieties in solicitation which are apparent prior to bid opening date shall be filed prior to bid opening.

This is a protest by Gibraltar Industries, Inc. (Gibraltar), against the award of a contract to any other bidder, under invitation for bids (IFB) No. DSA100-76-B-0003, issued by the Defense Supply Agency. Gibraltar contends that the procuring activity, in preparing the specifications, inadvertently omitted the end item testing requirement and Gibraltar, not being aware that the end item testing was omitted, included the costs of the testing in its bid.

The record indicates that bids were opened on August 1, 1975. Gibraltar's protest to our Office was not received until August 13, 1975. Gibraltar states that it has had prior experience in manufacturing the end item required in the invitation and, therefore, knew that testing was required. The omission of the end item testing requirement from the specification, which would have been readily apparent upon careful reading of the specification, was not noticed by Gibraltar until after bid opening.

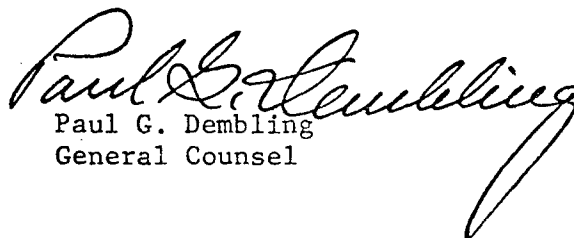
Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that:

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. \* \* \*"

Since Gibraltar did not protest the omission of the end item testing requirement prior to bid opening, its protest is untimely.

B-184699

Therefore, the merits of the protest will not be considered.

  
Paul G. Dembling  
General Counsel